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Salmon Project Agreement

Salmon Funding Accounts

Project Sponsor: Colville Confederated Tribes
Project Title: Omak Creek Watershed Restoration

Project Number: 00-1683D
SRFB Approval Date: 1/26/2001

A. PARTIES OF THE AGREEMENT

This Project Grant Agreement (Agreement) is entered into between the Salmon Recovery Funding Board (SRFB), P.O. Box 40917, Olympia, Washington 98504-0917 and Colville Confederated Tribes, PO Box 1946, Omak, WA 98841 (Project Sponsor) and shall be binding upon the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the Salmon Funding Accounts of the State of Washington's General Fund. The grant is made by the SRFB and administered by the Interagency Committee for Outdoor Recreation (IAC) to the Project Sponsor for the project named above.

C. DESCRIPTION OF PROJECT

The subject Project is described on the attached Project Summary.

D. TERM OF AGREEMENT

The Project Sponsor's ongoing obligation for the above project under this Agreement is to provide maintenance of the site or facility to serve the purpose for which it was intended for a minimum of five (5) years, or more as specified in the Landowner Agreement, after the final payment unless the site or facility is rendered unusable for the purpose it was intended by an act of nature.

E. PERIOD OF PERFORMANCE

The Project reimbursement period shall begin on July 1, 2001 and end on December 1, 2003. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement.

F. PROJECT FUNDING

The total grant award provided by SRFB for this project shall not exceed \$103,477.00. SRFB shall not pay any amount beyond that approved for funding of the project. The Project Sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the Project Sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
SRFB - SALMON ST PROJ	54.57%	\$103,477.00
Project Sponsor	45.43%	\$86,144.00
Total Project Cost	100.00%	\$189,621.00

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments, including the Sponsor's Application, Project Summary, Eligible Reimbursement Activities Report, Project Milestones, and the General Provisions, all of which are attached hereto and incorporated herein.

Except as provided herein, no alteration of any of the terms or conditions of this Agreement will be effective unless provided in writing. All such alterations, except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by IAC's Director.

The Project Sponsor has read, fully understands and agrees to be bound by all terms and conditions as set forth in these documents.

RECEIVED

MAY 10 2001

**INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION**

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND IAC POLICIES

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter 77.85 RCW, Chapter 286 WAC and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. ADDITIONAL PROVISIONS OR MODIFICATIONS OF THE GENERAL PROVISIONS

(none)

J. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications sent to the Sponsor under this Agreement will be addressed and delivered to:

Project Contact

Name: Christopher Fisher
Title: Fisheries Biologist II
Address: Omak Community Center
Omak, WA 98841

SRFB/IAC

Interagency Committee for Outdoor Recreation
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917
www.wa.gov/iac/salmonmain.html

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

K. ENTIRE AGREEMENT

This agreement, along with all attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

L. EFFECTIVE DATE

This agreement, for project #00-1683D, shall be effective upon signing by all parties.

STATE OF WASHINGTON
INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
ON BEHALF OF SALMON RECOVERY FUNDING BOARD

BY: Laura E. Johnson
Laura Eckert Johnson, Director

DATE: 3/9/01

PROJECT SPONSOR

BY: [Signature]
TITLE: ANADROMOUS FISHERIES BIOLOGIST

DATE: 5/8/01

Pre-approved as to form by the state Assistant Attorney General

General Provisions

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Section 1. HEADINGS and DEFINITIONS

(A) Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

(B) Definitions

Acquisition - The gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.

Agreement - The accord accepted by all parties to the present transaction; the Agreement, supplemental agreement, intergovernmental agreement, monitoring plan, and/or a landowner agreement between the Funding Board and a Sponsor.

Applicant - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the Funding Board.

Application - The forms and support documents approved by the Funding Board or its Director for use by applicants in soliciting project funds administered by the Office.

Development - The construction or installation of facilities to provide for outdoor recreation or natural resources.

Director - The Office Director or the Director's designee.

Funding Board - As identified in Paragraph A in the Agreement as either the (1) Interagency Committee for Outdoor Recreation (IAC) - The committee created under Chapter 79A.25.110 RCW includes eight members. Three are agency heads: the Commissioner of Public Lands, the Director of Parks and Recreation, and the Director of Fish and Wildlife (or their designees). Five, by appointment of the Governor with the advice and consent of the Senate, are members of the public at large who have demonstrated interest in and a general knowledge of outdoor recreation in the state; Or (2) Salmon Recovery Funding Board (SRFB) - The Board, created under Chapter 77.85.110 RCW, is comprised of five governor-appointed voting members (one a cabinet-level appointment) and five non-voting state officials: the Commissioner of Public Lands, the Secretary of Transportation, the Director of the Conservation Commission, the Director of Fish and Wildlife, and the Director of Ecology (or their designees).

Office - Office of the Interagency Committee - The Office provides support to the IAC and the SRFB. The Office includes the Director and personnel, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.

Landowner Agreement - A landowner agreement is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor for salmon recovery projects.

Milestone - Important date(s) tracked in the Agreement for monitoring the Project status.

Period of Performance - The time period specified in the Agreement, under Section E, Period of Performance.

Post Evaluation Summary - One of the documents used to summarize and describe the actions undertaken in the Agreement.

Project - The undertaking that is the subject of this Agreement and that is, or may be, funded in whole or in part with funds administered by the Office on behalf of the Funding Board.

Sponsor - The applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees and agents.

Section 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the Project as described in this Agreement, Post Evaluation Summary, the Sponsor's application, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the Funding Board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 26.

Timely completion of the Project is important. Failure to do so, as set out in this Agreement, is a material breach of the Agreement.

Section 3. RESTRICTIONS ON ASSIGNMENT

The Sponsor shall not assign this Agreement, or the performance of any obligations to the Funding Board and the Office under this Agreement, or any claim against the Funding Board or the Office it may have under this Agreement, without the express written consent of the Funding Board or Director.

Section 4. RESPONSIBILITY FOR PROJECT

While the Funding Board undertakes to assist the Sponsor with the Project by providing a grant pursuant to this Agreement, the Project itself remains the sole responsibility of the Sponsor. The Funding Board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the Project, as those phases are applicable to this Project, is solely that of the Sponsor, as is responsibility for any claim or suit of any nature by any third party related in any way to the Project.

To the extent permitted by law, the Sponsor shall defend, protect and hold harmless the state of Washington, the Funding Board, the Office, or any employees thereof, from and against all claims, suits or actions arising from the Sponsor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark or tradename through use or reproduction of material of any kind.

Section 5. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not employees or agents of the Funding Board or the Office. The Sponsor will not hold itself out as nor claim to be an officer or employee of the Office or of the state of Washington by reason hereof, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B.16 RCW.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

Section 6. CONFLICT OF INTEREST

The Funding Board or the Office may, by written notice to the Sponsor, terminate this Agreement if it is found after due notice and examination by the Office that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided above, the Funding Board or the Office shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of the Funding Board or the Office provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Funding Board or the Office makes any determination under this clause may be reviewed as provided in the "Disputes" clause of this Agreement.

Section 7. ACKNOWLEDGMENT AND SIGNS

- (A) Publications. The Sponsor shall include language which acknowledges the funding contribution of the program to this Project in any release or other publication developed or modified for, or referring to, the Project.
- (B) Signs. The Sponsor also shall post signs or other appropriate media at Project entrances and other locations on the Project which acknowledge the program's funding contribution as provided by Funding Board policy, unless exempted in Funding Board policy or waived by the Director.
- (C) Ceremonies. The Sponsor shall notify the Office no later than two weeks before a dedication ceremony for this Project. The Sponsor shall verbally acknowledge the program's funding contribution at all dedication ceremonies.
- (D) Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
 - (1) The percentage of the total costs of the Project that is financed with federal money;
 - (2) The dollar amount of federal funds for the Project; and
 - (3) The percentage and dollar amount of the total costs of the Project that is financed by nongovernmental sources.

Section 8. COMPLIANCE WITH APPLICABLE LAW

The Sponsor will implement the Agreement in accordance with applicable federal, state, and local laws and regulations.

The Sponsor shall comply with, and the Office is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to, State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (comprehensive areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to, the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the Funding Board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

Section 9. RECORDS AND REPORTS

The Sponsor shall maintain books, records, contracts, bid sheets and other documents that provide evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Office, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Sponsor will retain all books, records, documents, and other materials relevant to this Agreement for six years after settlement, and make them available for inspection by persons authorized under this provision.

Section 10. AUTHORITY TO INSPECT/RIGHT OF ENTRY

In order to monitor and evaluate performance, compliance, and/or provide quality assurance under this Agreement, the Sponsor shall provide right of access to its lands and facilities to the Funding Board, the Office, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government at all reasonable times.

If a Landowner Agreement has been executed, it may further stipulate and define the Funding Board and the Office's right to inspect and access lands acquired or developed with Funding Board assistance.

Section 11. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the monitoring and stewardship plans as approved by the Funding Board or the Office. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the Funding Board.

Section 12. PROJECT FUNDING

- (A) Additional Amounts. Sponsor should assume that no additional funds are available. The Funding Board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the Funding Board or Director and incorporated by written amendment into this Agreement.
- (B) Before the Agreement. No expenditure made, or obligation incurred, by the Sponsor before the effective date of this Agreement shall be eligible for grant funds, in whole or in part, unless specifically provided for by Funding Board policy. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- (C) After the Period of Performance. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the Funding Board may have under this Agreement, the amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

Section 13. PROJECT REIMBURSEMENTS

- (A) Compliance and Payment. The obligation of the Office to pay any amount(s) under this Agreement is expressly conditioned upon strict compliance with the terms of this Agreement by the Sponsor.
- (B) Compliance and Retainage. The Office reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the Sponsor until the Project has been completed and approved by the Director. A Project is considered "complete" when:
- (1) all approved or required activities outlined in the Agreement are complete;
 - (2) on-site signs are in place (if applicable);
 - (3) a final Project report is submitted to the Office with the Sponsor's final request for reimbursement;
 - (4) the completed Project has been approved by the Office;
 - (5) final amendments have been processed; and
 - (6) fiscal transactions are complete.
- (C) Invoice Frequency. Invoices are required at least once a quarter from state agency sponsors and at least once a year from all other sponsors. The year-end invoice should include expenditures through June 30, the last day of the State's fiscal year and be submitted no later than July 15th. Final reimbursement requests should be submitted to the Office within ninety (90) days of the completion of the Project, funding end date, or the termination date, whichever comes first.

Section 14. NON-AVAILABILITY OF FUNDS

If amounts sufficient to fund the grant made under this Agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to the Office for expenditure for this Agreement in any biennial fiscal period, the Office shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If the Office participation is suspended under this section for a continuous period of one year, the Office's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

Section 15. RECOVERY OF PAYMENTS

In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, the Office reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance.

The Sponsor shall reimburse the Office for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by the Office. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

Section 16. PROVISIONS APPLYING TO DEVELOPMENT PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for development of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- (A) **Construction Document Review and Approval.** The Sponsor agrees to submit one copy of all construction plans and specifications to the Office for review. Review and approval by the Office will be for compliance with the terms of this Agreement.
- (B) **Contracts for Construction.** Sponsor shall award all contracts for construction using whatever method is appropriate and legal for the Sponsor.
- (C) **Construction Contract Change Order.** Only change orders that significantly reduce or change the scope of the Project as described to and approved by the Funding Board or the Office must receive prior written approval. Routine construction change orders do not need review or approval.
- (D) **Control and Tenure.** Appropriate control and tenure of the land proposed for use must be executed and documented.
- (E) **Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this Project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

Section 17. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for the acquisition of interest in real property for outdoor recreation, habitat conservation, or salmon recovery activities:

- (A) **Evidence of Land Value.** Before disbursement of funds by the Office as provided under this Agreement, the Sponsor agrees to supply evidence to the Office that the land acquisition cost has been established per Funding Board policy.
- (B) **Evidence of Title.** The Sponsor agrees to show the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- (C) **Deed of Right to Use Land for Public Purposes.** The Sponsor agrees to execute an instrument or instruments which contain:
 - (1) the legal description of the property acquired under this Agreement;
 - (2) a conveyance to the State of Washington of the right to use the described real property forever for the purpose identified in the Agreement; and
 - (3) a requirement to comply with applicable statutes, rules, and the Funding Board policies with respect to conversion of use.
- (D) **Assignment of Right.** When acquiring a conservation easement, the Sponsor agrees to execute an instrument or instruments that contain:
 - (1) The legal description of the conservation easement acquired under this Agreement;
 - (2) An assignment to the State of certain rights for access to and stewardship of the property covered by the conservation easement;
 - (3) Acknowledgement of the right of the Funding Board and the Office for enforcement of the provisions of the conservation easement; and

- (4) A statement that the Sponsor will retain all responsibility for obligations under the terms of the conservation easement.
- (E) Real Property Acquisition and Relocation Assistance
 - (1) When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
 - (2) When state funds are part of this Agreement, the Sponsor, if required by law, agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26.010 RCW, and Chapter 468-100 WAC.
 - (3) Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and state law set out in subsection (2) above, are involved in the execution of this Project, the Sponsor agrees to provide any housing and relocation assistance that may be necessary, with the understanding that eligible relocation costs may be part of the total Project cost.

Section 18. HAZARDOUS SUBSTANCES

- (A) Definition. "Hazardous substance," as defined in Chapter 70.105D.020 (7) RCW, means:
 - (1) Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) RCW, or any dangerous or extremely dangerous waste designated by rule pursuant to Chapter 70.105 RCW;
 - (2) Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105. RCW;
 - (3) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
 - (4) Petroleum or petroleum products; and
 - (5) Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee of the department of ecology] by rule to present a threat to human health or the environment if released into the environment.
 - (6) The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law."
- (B) Certification. The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances and certify:
 - (1) No hazardous substances were found on the site, or
 - (2) Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
- (C) Responsibility. Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- (D) Hold Harmless. The Sponsor will defend, protect and hold harmless the Office and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

Section 19. RESTRICTION ON CONVERSION OF FACILITY TO OTHER USES

The Sponsor shall not at any time convert any real property acquired or any facility developed pursuant to this Agreement to uses other than those purposes for which assistance was originally approved, without the approval of the Funding Board or Director, in compliance with applicable statutes, rules, and Funding Board policies as identified in this Agreement. It is the intent of Funding Board's conversion policy that all lands acquired and all lands developed with funding assistance from the Funding Board remain in the public domain in perpetuity unless otherwise identified in the Agreement.

By Funding Board policy a conversion may occur under any of the following circumstances:

- (A) Conveyance. Property interests are conveyed for purposes inconsistent with the intent of the Agreement and the funding source.
- (B) Use. Non-eligible uses (public or private) are made of the Project area, or portion thereof.
- (C) Eligibility. Non-eligible facilities are developed within the Project area without prior approval of the Funding Board or the Office.
- (D) Termination of Use/Non-Conformance. The property acquired or project developed no longer meets or conforms to the intent of the Agreement or the funding source.
- (E) Element Change. When approved by the Funding Board or Director, certain elements may be deleted from the Agreement without invoking the requirement to replace the elements. Such deletions are allowed when the Funding Board or Director determines that the elements are not needed or cannot be retained due to one or more of the following conditions:
 - (1) Obsolescence
 - (2) Extraordinary vandalism
 - (3) Acts of Nature
 - (4) Designed life expectancy reached
 - (5) Fire
 - (6) Property or property rights lost as a result of legal action
 - (7) ICC National Trails System Act reversion order (*National Trails System Act 8(d)*, 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

Section 20. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

Except for habitat conservation¹ and salmon recovery areas generally closed to the public, Sponsors must ensure that properties or facilities assisted with Funding Board funds, including undeveloped sites, are built, operated and maintained:

- (A) Appearance. To appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- (B) Laws. According to applicable federal, state, and local laws and regulations, including public health standards, building codes and accessibility guidance.
- (C) Safety. In a reasonably safe condition for public use.
- (D) Maintenance. Throughout its estimated life so as to prevent undue deterioration.

¹ In this context, the words *habitat conservation* refer to the projects funded through the Habitat Conservation Account.

- (E) Availability. For use at reasonable hours and times of the year, according to the type of area or facility.
- (F) Nondiscrimination. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Section 21. INCOME AND INCOME USE

- (A) Income.
 - (1) Compatible source. The source of any income generated in a Funding Board assisted Project or project area must be compatible with the funding source and the Agreement.
 - (2) Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with Funding Board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunity(ies) furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.

Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.252.210 RCW).

- (B) Income use. Regardless of whether income or fees in a Funding Board-assisted area (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state law, the revenue may only be used to offset:
 - (1) the Sponsor's matching funds; and/or
 - (2) the Project's total cost; and/or
 - (3) the expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the Funding Board grant; and/or
 - (4) the expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system; and/or
 - (5) capital expenses for similar acquisition and/or development.

Section 22. PREFERENCES FOR USERS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the Funding Board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

Section 23. PROVISIONS RELATED TO NONPROFIT SPONSORS

A nonprofit or not-for-profit organization sponsor shall:

- (A) Strive to maintain a nonprofit or not-for-profit status (including registering with the Washington Secretary of State) throughout the Sponsor's obligation to the Project as identified in this Agreement. However, should a change in status become inevitable (for example, due to dissolution), within 30 days the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement.
- (B) The nonprofit or not-for-profit organization will notify the Office prior to dissolution and will process an amendment with the Office transferring the Sponsor's obligation to the qualified successor.
- (C) Provide for operation and maintenance of the assisted facility. Should the Sponsor fail in this obligation for any reason, the Project will be considered converted or a failed project, and be subject to all remedies available to the Funding Board and the Office.

Section 24. LIABILITY INSURANCE REQUIREMENTS FOR FIREARM RANGE SPONSORS

The Sponsor² shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.

- (A) The liability insurance policy, including any endorsement or addition, shall name Washington State, the Funding Board, and the Office as additional insureds and shall be in a form approved by the Funding Board or Director.
- (B) The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the Project as identified in this Agreement.
- (C) The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to the Office not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- (D) The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the Funding Board.
- (E) By this requirement, the Funding Board and the Office does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based upon such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

² As used in this Section, Sponsor refers to Firearms Range Sponsors.

Section 25. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the Project has been approved by the National Park Service, United States Department of the Interior, for assistance from the Federal Land and Water Conservation Fund (LWCF), the Agreement General Provisions in Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual* as now existing or hereafter amended are made part of this Agreement, and the Sponsor shall also abide by these Agreement General Provisions. Further, the Sponsor agrees to provide the Office with reports or documents needed to meet the requirements of the Agreement or Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual*.

Section 26. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- (A) Applicable federal and/or state statutes, regulations policies and procedures including applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- (B) Additional Provisions or Modifications of the General Provisions;
- (C) General Provisions; and
- (D) Any other attachments or provisions incorporated by reference or otherwise stated in this Agreement.

Section 27. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the Director, or the Director's designee, and attached to the original Agreement.

Section 28. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Board and the Office rely upon the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

Section 29. TERMINATION AND OTHER REMEDIES

The Funding Board and the Office may require strict compliance by the Sponsor with the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and Funding Board policies which are incorporated into this Agreement, and with the representations of the Sponsor in its application for a grant as finally approved by the Funding Board.

The Funding Board or the Director, may suspend, or may terminate, the obligation to provide funding to the Sponsor under this Agreement:

- (A) In the event of any breach by the Sponsor of any of the Sponsor's obligations under this Agreement; or

- (B) If the Sponsor fails to make progress satisfactory to the Funding Board or Director toward completion of the Project by the completion date set out in this Agreement; or
- (C) If in the opinion of the Funding Board or Director, the Sponsor fails to make progress necessary to complete any other project assisted with grant funds from the Funding Board within the completion date set out by the Agreement.

In the event this Agreement is terminated by the Funding Board or Director, under this section or any other section after any portion of the grant amount has been paid to the Sponsor under this Agreement, the Funding Board or Director may require that any amount paid be repaid to the Office for redeposit into the account from which the funds were derived.

The Funding Board and the Office may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the Project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to the Office. No remedy available to the Funding Board or the Office shall be deemed exclusive. The Funding Board or the Office may elect to exercise any, any combination, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

Section 30. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the Funding Board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- (A) The disputed issues;
- (B) The relative positions of the parties;
- (C) The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the Director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed upon, the third person shall be chosen by the Funding Board's Chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based upon written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

Section 31. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County Superior Court. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this agreement is between the Funding Board and a federally recognized Indian tribe, the following Governing Law/Venue applies:

- (A) The State of Washington agrees that it shall initiate any lawsuit against a federally recognized Indian tribe arising out of or relating to the performance, breach or enforcement of this agreement in Federal Court. Interpretation shall be according to the law of the State of Washington. In the event that the Federal Court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court, but the parties agree that the matter shall not be pursued in superior court unless there is a Federal Court determination that it lacks subject matter jurisdiction.
- (B) Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable upon the parties. Any money judgment or award against the Tribe, tribal officers and members, or the State of Washington and its officers and employees may not exceed the amount provided for in Section F- Project Funding of the Agreement.
- (C) The Tribe hereby waives its sovereign immunity as necessary to give effect to this section, and the State of Washington has waived its immunity to suit in state court. These waivers are only for the benefit of the Tribe and State and shall not be enforceable by any third party or by any assignee or delegate of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

Section 32. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision and to this end the provisions of this Agreement are declared to be severable.